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**PART-III**  
**GOVERNMENT OF MEGHALAYA**  
**ELECTION DEPARTMENT**  
**ORDERS BY THE GOVERNOR**  
**NOTIFICATION**

The 13th October, 2007.

**I/DNo.EL.43/2007/42.**—The following Notification issued by the Election Commission of India is hereby republished for general information.

**CASE UNDER ARTICLE 192 OF THE CONSTITUTION OF INDIA**

Shri Robert Kharshiing and 3 others	.....	Petitioner
	VRS	
Shri Charles Pyngrope and 24 others MLA's	.....	Respondent

**ORDER**

“Whereas a question was raised in the petition dated 30th March, 2006, submitted by Shri Robert Kharshiing, M.P. (Rajya Sabha) and 3 (three) others with regard to disqualification allegedly incurred under Article 191 (1)(a) of the Constitution, by the 25 Members of the Meghalaya Legislative Assembly named in the aforesaid petition dated 30th March, 2006.

And whereas the said question was duly forwarded to the Election Commission for its opinion on the aforesaid question raised by the aforesaid Shri Robert Kharshiing and others.

And whereas the opinion of the Election Commission of India has been received.

Now I, B. L. Joshi, Governor of Meghalaya having carefully perused the said opinion of the Election Commission of India forwarded under cover of Memo No. etc., Dated 22nd June, 2007 of the Shri R. K. Srivastava, Secretary of the Election Commission of India, in accord with the aforesaid opinion dated 21st June, 2007 of the Election Commission of India, I hereby render my decision that the aforesaid 25 Members of the Meghalaya Legislative Assembly namely, (1) Shri Charles Pyngrope, (2) Shri R. G. Lyngdoh, (3) Shri Tony Curtis Lyngdoh, (4) Shri Tonsing N. Marak, (5) Shri E. D. Marak, (6) Shri K. K. Dkhar, (7) Shri D. P. Iangjuh, (8) Shri Prestone Tynsong, (9) Shri Predickson Momin, (10) Shri P. M. Syiem, (11) Shri Sing Mulieh, (12) Shri Zenith M. Sangma, (13) Shri F. A. Khonglam, (14) Shri Rieng Lenon Tariang, (15) Shri John Anthony Lyngdoh, (16) Shri Bires B. Nongsiej, (17) Shri Boldness L. Nongum, (18) Shri Manirul Islam Sarkar, (19) Shri Lambor Malngiang, (20) Shri Stanleywiss Rymbai, (21) Shri Sengran Sangma, (22) Shrimati Irin Lyngdoh, (23) Shri Francis Pondit R. Sangma, (24) Shri Nidhu Ram Hajong, and (25) Shri Clement Marak (respondents to the petition dated 30th March, 2006) have not incurred any disqualification under Article 191(1)(a).”

**B. L. JOSHI,**  
Governor of Meghalaya.

### Reference Case No.108(G) of 2006

[Reference from the Governor of Meghalaya under Article 192(2) of the Constitution of India]

Shri Robert Kharshiing and 3 others	.....	Petitioners
	VRS	
Shri Charles Pyngrope and 24 others MLA's	.....	Respondents

***In re : Alleged disqualification of (1) Shri Charles Pyngrope, (2) Shri R. G. Lyngdoh, (3) Shri Tony Curtis Lyngdoh, (4) Shri Tonsing N. Marak, (5) Shri E. D. Marak, (6) Shri K. K. Dkhar, (7) Shri D. P. langjuh, (8) Shri Prestone Tynsong, (9) Shri Predickson Momin, (10) Shri P. M. Syiem, (11) Shri Sing Mulieh, (12) Shri Zenith M. Sangma, (13) Shri F. A. Khonglam, (14) Shri Rieng Lenon Tariang, (15) Shri John Anthony Lyngdoh, (16) Shri Bires B. Nongsiej, (17) Shri Boldness L. Nongum, (18) Shri Manirul Islam Sarkar, (19) Shri Lambor Malngiang, (20) Shri Stanleywiss Rymbai, (21) Shri Sengran Sangma, (22) Shrimati Irin Lyngdoh, (23) Shri Francis Pondit R. Sangma, (24) Shri Nidhu Ram Hajong, and (25) Shri Clement Marak, Members of Meghalaya Legislative Assembly, under Article 191(1)(a) of the Constitution of India.***

### OPINION

This opinion deals with a reference dated 4th January, 2007, received from the Governor of Meghalaya, seeking the opinion of the Election Commission under Article 192(2) of the Constitution of India, on the question whether (1) Shri Charles Pyngrope, (2) Shri R. G. Lyngdoh, (3) Shri Tony Curtis Lyngdoh, (4) Shri Tonsing N. Marak, (5) Shri E. D. Marak, (6) Shri K. K. Dkhar, (7) Shri D. P. langjuh, (8) Shri Prestone Tynsong, (9) Shri Predickson Momin, (since expired on 6th July, 2006), (10) Shri P. M. Syiem, (11) Shri Sing Mulieh, (12) Shri Zenith M. Sangma, (13) Shri F. A. Khonglam, (14) Shri Rieng Lenon Tariang, (15) Shri John Anthony Lyngdoh, (16) Shri Bires B. Nongsiej, (17) Shri Boldness L. Nongum, (18) Shri Manirul Islam Sarkar, (19) Shri Lambor Malngiang, (20) Shri Stanleywiss Rymbai, (21) Shri Sengran Sangma, (22) Shrimati Irin Lyngdoh, (23) Shri Francis Pondit R. Sangma, (24) Shri Nidhu Ram Hajong, and (25) Shri Clement Marak ('respondents' hereinafter), all Members of the Legislative Assembly of Meghalaya, have incurred disqualification for being Members of the Legislative Assembly of Meghalaya under Article 191(1)(a) of the Constitution of India. While making the reference to the Commission, the Governor also enclosed a copy each of the "Prevention of Disqualification (Members of the Legislative Assembly of Meghalaya) Act, 1972" and Amendment Acts of 1979, 1983 and 1985, together with a copy of the Prevention of Disqualification (Members of the Legislative Assembly of Meghalaya) (Amendment) Bill, 2006, as passed by the Meghalaya Legislative Assembly on 4th July, 2006 and assented to by the Governor on 25th July, 2006.

2. The above question arose on a petition dated 30th March, 2006 by Shri Robert Kharshiing, Member of Parliament (Rajya Sabha) and 3 others, submitted to the Governor of Meghalaya under Article 192(1) of the Constitution of India. The petitioner alleged that the respondents had been enjoying various perks and benefits attached to the offices to which they were appointed, which clearly indicated that they were holding offices of profit and, therefore, had incurred disqualification under Article 191(1)(a) of the Constitution of India. The petitioner further stated that one of the respondents Shri R. G. Lyngdoh, had been given the status of Deputy Chief Minister and by virtue of this he was enjoying all the salaries, perks and facilities of the said post while actually not being so appointed.

3. The offices stated to be held by the 25 respondents are mentioned in the Table below :-

<b><u>Sl. No.</u></b>	<b><u>Name of the Respondent</u></b>	<b><u>Office(s) held</u></b>
1	Shri Charles Pyngrope	(a) Parliamentary Secretary. (b) Chairman, Meghalaya Government Construction Corporation Ltd. (c) Chairman, Meghalaya Resource and Employment Generation Council
2.	Shri R. G. Lyngdoh	Chairman, Meghalaya Economic Development Council.
3.	Shri Tony Curtis Lyngdoh	Chairman, Meghalaya State Advisory Board.
4.	Shri Tonsing N. Marak	Chairman, Meghalaya Bamboo Chips Ltd.
5.	Shri E. D. Marak	Co-Chairman, Meghalaya State Planning Board.
6.	Shri K. K. Dkhar	Co-Chairman, Meghalaya State Development Reforms Commission.
7.	Shri D. P. Iangjuh	Chairman, Meghalaya Minerals Development Corporation.
8.	Shri Prestone Tynsong	(a) Chairman, Meghalaya Watches Ltd. (b) Chairman, Meghalaya Electronics Development Corporation Ltd.
9.	Shri Predickson Momin	(a) Chairman, Meghalaya Fish Farmers Development Agency. (b) Chairman, Meghalaya Non-Conventional and Rural Energy Development Agency.
10.	Shri P. M. Syiem	Chairman, Meghalaya State Commission on Resource Mobilization.
11.	Shri Sing Mulieh	Chairman, Meghalaya Resource and Employment Generation Council.
12.	Shri Zenith M. Sangma	Chairman, Mawmluh Cherra Cements Ltd.
13.	Dr. F. A. Khonglam	Co-Chairman, State Planning Board.
14.	Shri Rieng Lenon Tariang	Parliamentary Secretary.
15.	Shri John Anthony Lyngdoh	Parliamentary Secretary.
16.	Shri Bires B. Nongsiej	Parliamentary Secretary.
17.	Shri Boldness L. Nongum	Parliamentary Secretary.
18.	Shri Manirul Islam Sarkar	Parliamentary Secretary.
19.	Shri Lambor Malngiang	Parliamentary Secretary.
20.	Shri Stanleywiss Rymbai	Parliamentary Secretary.
21.	Shri Sengran Sangma	Parliamentary Secretary.
22.	Shrimati Irin Lyngdoh	Parliamentary Secretary.
23.	Shri Francis Pondit R. Sangma	Parliamentary Secretary.
24.	Shri Nidhu Ram Hajong	Parliamentary Secretary.
25.	Shri Clement Marak	Parliamentary Secretary.

4. The petition did not contain information about the dates of appointments of the respondents to the offices mentioned in the petition. It is well settled that under Article 192(1) of the Constitution of India, the jurisdiction of the Governor to decide question of disqualification of a sitting Member of Legislative Assembly arises only in the case of disqualification incurred after election as a Member of the House. The jurisdiction of the Election Commission to inquire into such question of the alleged disqualification, on being referred to it by the Governor under Article 192(2) of the Constitution, also arises only in case of post-election disqualification. Any question of pre-election disqualification, i.e., disqualification from which a person was suffering at the time of, or prior to his election, can be raised by means of an election petition presented in accordance with the provisions of Article 329(b) of the Constitution read with Part-VI of the Representation of the People Act, 1951, and not under Article 192(1). Reference is invited, in this connection, to the Supreme Court's catena of decisions in *Election Commission Vs. Saka Venkata Rao* (AIR 1953 SC 201); *Brundaban Naik Vs. Election Commission* (AIR 1965 SC 1892); *Election Commission Vs. N. G. Ranga* (AIR 1978 SC 1609). The Commission, therefore, issued notice to the petitioner, on 18th January, 2007, asking him to furnish, by 9th February, 2007, (a) the precise information about the dates of appointments of the respondents to the offices stated to be held by them, (b) all relevant information/documents by which the petitioner proposed to substantiate his contention/allegation that the respondents were holding offices of profit under the Government within the meaning of Article 191(1)(a) of the Constitution of India, and (c) the present addresses of the respondents.

5. As the petitioner failed to furnish the requisite information even after stipulated time, the Commission *vide* its letters dated 17th May, 2007 asked the State Government to provide the last/latest dates of appointments in respect of all the 25 respondents. The State Government furnished the dates of appointment of all the 25 respondents *vide* letter dated 29th May, 2007 which showed that they had been appointed on various dates from 7th March, 2003 onwards.

6. The last general election to the Legislative Assembly of Meghalaya was held in February-March 2003. The results of all the Assembly Constituencies were declared on 1st March, 2003. As per the information regarding the dates of appointments of the 25th respondents, furnished by the State Government of Meghalaya, it is seen that all the 25 respondents have been appointed to the respective offices mentioned in the petition, after their election to the Legislative Assembly of Meghalaya.

7. It is to be mentioned here that one of the respondents, Shri Predickson Momin has since expired on 6th July, 2006, and therefore, the question of his alleged disqualification has now become infructuous.

8. It is well settled that the holding of every office does not lead to disqualification under Article 191(1)(a). The Constitution, in that Article itself, has empowered the State Legislature to declare any office as exempted from the provisions of disqualification under that Article. Therefore, before going into further aspects, it has to be first examined whether the offices held by the respondents are exempted from disqualification by the State Legislature. For this purpose, it is relevant to reproduce Article 191(1)(a) here :—

“191. Disqualification for Membership :— (1) A person shall be disqualified for being chosen as, and for being a Member of the Legislative Assembly or Legislative Council of a State :—

- (a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by Law not to disqualify its holder”.

9. The law passed by the Legislative Assembly of Meghalaya declaring certain offices as offices the holders of which are exempted from disqualification is the “Prevention of Disqualification (Members of the Legislative Assembly of Meghalaya) Act, 1972” (in short, “1972 Act”). It is well settled that the State Legislature is empowered to declare any office, even if it carries profit, as exempted from the purview of the disqualification under Article 191(1)(a). Now, the question for consideration is whether the offices held by the respondents are exempted from disqualification under the 1972-Act, as amended from time to time. For this purpose, it is useful to reproduce here Item Nos. 3, 7, 7A and 16 of the Schedule to Section 2 of the 1972-Act, as amended from time to time :—

- “2. A person shall not be disqualified or shall not be deemed ever to have been disqualified for being chosen as, or for being, a Member of the Legislative Assembly of Meghalaya by reason of the fact that he holds any of the offices specified in the Schedule in so far as it is an office of profit under the State Government.

**THE SCHEDULE**

( SEE SECTION 2 )

3. The office of the Parliamentary Secretary to the Government of Meghalaya.
7. The office of the Chairman, Vice-Chairman, or Member of any Committee, Board or Authority appointed by the Government of India or Government of any State specified in the First Schedule to the Constitution of India.
- 7A. The office, whether whole time or not, of the Chairman, Vice-Chairman, Deputy Chairman or Member of the State Planning Board or of the State Level Public Grievances Committee or any other Board or Committee constituted by the State Government of Meghalaya.
- EXPLANATION—1. "Committee" means any Committee, Commission, Council or any other body of one or more persons, whether statutory or not, set up by the Government of India or the Government of any State.
- EXPLANATION—2. "Board of Authority" means any Corporation, Company, Society or any other body of one or more persons, whether incorporated or not, established, registered or formed by or under any Central Law or Law of any State for the time being in force or exercising powers and functions under any such law.
- EXPLANATION—3. For the removal of doubt, the word "Chairman" or "Vice Chairman" wherever appearing in this Schedule includes and shall be deemed to have always included a Co-Chairman or Deputy Chairman respectively.
16. The office of a Chairman or Deputy Chairman of any Board or Committee, or any office, which a Member of the Meghalaya Legislative Assembly holding it enjoys the facilities, privileges or status of a Minister or a Minister of State, as the case may be."
10. As Item No 3 of the Schedule appended to Section 2 of the 1972-Act, as amended from time to time, quoted above, the office of the Parliamentary Secretary has specifically been exempted from disqualification without any condition attached thereto, further, the office of the Chairman/Vice-Chairman/Co-Chairman of any Committee, Commission, Board, Council or Authority is exempted from disqualification under Item Nos. 7 and 7A of the Schedule appended to said Section 2 of the 1972 Act. Furthermore, as per Item No. 16 of the Schedule appended to said Section 2 of the 1972 Act, a Member of the Legislative Assembly of Meghalaya holding the office of the Chairman/Deputy Chairman of any Board or Committee, or any office, and enjoying the facilities, privileges or status of a Minister or a Minister of State, has also been protected from disqualification. Thus, the offices mentioned in the petition, held by the respondents have been declared exempted from disqualification under the 1972 Act, as amended from time to time.
11. Having regard to the above Constitutional and legal position, the Commission is of the considered view that none of the 25 respondents is subject to disqualification on account of their holding the offices mentioned in the petition, as the disqualification, if any, in their cases stands removed by virtue of the 1972 Act as amended time to time. Accordingly, the reference from the Governor is returned with the Commission's opinion to the effect that the respondents, namely, Shri Charles Pyngrope, Shri R. G. Lyngdoh, Shri Tony Curtis Lyngdoh, Shri Tonsing N. Marak, Shri E. D. Marak, Shri K. K. Dkhar, Shri D. P. Iangjuh, Shri Prestone Tynsong, Shri Predickson Momin, (since expired on 6th July, 2006), Shri P. M. Syiem, Shri Sing Mulieh, Shri Zenith M. Sangma, Shri F. A. Khonglam, Shri Rieng Lenon Tariang, Shri John Anthony Lyngdoh, Shri Bires B. Nongsiej, Shri Boldness L. Nongum, Shri Manirul Islam Sarkar, Shri Lambor Malngiang, Shri Stanleywiss Rymbai, Shri Sengran Sangma, Shrimati Irin Lyngdoh, Shri Francis Pondit R. Sangma, Shri Nidhu Ram Hajong, and Shri Clement Marak, Members of the Meghalaya Legislative Assembly have not incurred any disqualification under Article 191(1)(a) on account of their appointment to the office mentioned in the petition referred to in para 3 above.

**S. Y. QURAISHI,**  
Election Commissioner.

**N. GOPALASWAMI,**  
Chief Election Commissioner.

**NAVIN B. CHAWLA,**  
Election Commissioner.

Place : New Delhi.

Dated : 21st June, 2007.